

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Alquist Analyst: Kristina E. North Bill Number: AB 902
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 23, 2001
Attorney: Patrick Kusiak Sponsor: Governor's Office

SUBJECT: Employer Public School Math or Science Teachers Credit/Open Enrollment Class Credit

SUMMARY

This bill would create two credits:

1. A credit for employers for lending an employee to a public school to teach math or science; and
2. A credit for employers for allowing a public school teacher to attend an employer-sponsored education class by using open enrollment spaces.

These credits will be discussed separately.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to encourage employers to assist school districts with vacant positions by lending their employees to the school districts to teach math and science and to invite public school teachers to attend, without cost, educational classes sponsored by the employer.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and apply to taxable years beginning on or after January 1, 2001.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to assist the author in resolving the implementation and policy considerations discussed below.

Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Alan Hunter for GHG

04/02/01

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state laws allow an employer to deduct expenses paid or incurred for ordinary and necessary business expenses of a trade or business, such as salaries, wages, and employee benefits.

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Existing state law provides hiring credits based on qualified wages to specified employees of businesses within various economic development areas. Although other limitations and restrictions may apply, qualified wages for most of these hiring credits cannot exceed 150% of minimum wage (which currently equates to \$9.38 per hour).

Generally, **existing state law** requires teachers for grades K-12 (including high school math and science) to be credentialed, with certain exceptions such as in emergency situations. Single subject and multiple subject credentials may be issued when specified criteria are met. A person working as an assistant under the direction of a credentialed teacher need not be credentialed.

THIS BILL

LOANED TEACHERS CREDIT

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), **this bill** would allow an employer a credit equal to 50% of qualified wages paid or incurred in connection with lending a qualified employee to a public school to teach math or science.

This bill defines:

- "Qualified wages" as the pro rata amount of the total, direct wages of a qualified employee paid or incurred by the taxpayer for the employee's qualified teaching time. Wages would not include pensions or other deferred compensation, bonuses, stock options, or other lump sum payments.
- "Qualified employee" as an employee whose employment specialty includes mathematics or science.
- "Qualified teaching time" as only those hours spent by a qualified employee in a classroom teaching mathematics or science in this state.
- "Public school" as any middle school or high school (grades 7 through 12, inclusive, or any portion thereof) in this state that is part of a public school district with a vacant teaching position.
- "Mathematics" as instruction designed to develop mathematical understanding, mathematical operational skills, and insight into mathematical problem-solving procedures.

- "Science" as biological sciences, chemistry, geosciences, physics, or health sciences.
- "Certified" as the issuance to the taxpayer of a service record by the public school, verifying receipt of the teaching time. The credit is allowable only if the qualified teaching time is certified by the public school receiving the teaching services. The service record is required to contain the qualified employee's name, dates and number of hours of qualified teaching time, and a verified signature from an authorized agent or designee of the public school. The service record must also contain certification from the governing school district that the teaching position in the public school for which the qualified employee provided teaching services was vacant at the time the school made the decision to have the qualified employee provide teaching services. The determination that a position is vacant is only valid for one school year or until the qualified employee is no longer providing teaching services to the school, whichever comes first.

This bill would specify that no credit would be allowed unless the public school has a teaching position that is vacant due to the unavailability, as certified by the governing school district, of a teacher who possesses a valid credential or authorization to teach mathematics or science, as appropriate.

This bill would specify that no deduction would be allowed for the same expenses for which the credit was allowed.

Any excess credit could be carried over for up to eight years.

IMPLEMENTATION CONSIDERATION

For the department to implement this credit effectively, definitions or clarifications are needed for:

- "Employment specialty" is vague and could apply to virtually any employment. It is uncertain if the author intended that the employee should be in a specialized position requiring some upper level education in math or science to qualify as a "specialty."
- "Instruction designed to develop," "mathematical understandings," "mathematical operational skills," "insight into mathematical problem-solving procedures" are vague and could apply to something as simplistic as basic addition and subtraction. It is unclear if this is the author's intent.

OPEN ENROLLMENT CREDIT

Under the PITL and B&CTL, **this bill** would create a credit equal to 50% of qualified expenses paid or incurred for allowing a credentialed public school teacher to attend without charge an employer-sponsored education class by using open enrollment spaces.

This bill would define:

- "Qualified expenses" as a pro rata amount of the total, direct wages of a qualified employee paid by the employer for the qualified teaching time of that employee. Wages would not include pensions or other deferred compensation, bonuses, stock options, or other lump sum payments. The expenses must be prorated among all class participants.
- "Public school" as any middle school or high school (grades 7 through 12, inclusive) in this State that is part of a public school district.
- "Education class" as a course of instruction in which the majority of time is spent providing attendees with direct instruction in mathematics, biological sciences, chemistry, geosciences, health science, or physics.
- "Certified" as the issuance of a receipt to the taxpayer verifying the qualified teaching time. **This bill** would specify that a credit would be allowed only if the qualified teaching time is certified by the public school who received training at an employer-sponsored education class in mathematics or science. The receipt must contain the names of the public school teachers attending the employer-sponsored education class, dates and number of hours of the class, and a verified signature from an authorized agent or designee of the public school.

This bill would specify that a deduction would be allowed only if the enrollment space that has been left open is due to the inability of the taxpayer's employees to attend the education class, despite having been previously registered.

This bill would specify that no deduction would be allowed for the same expenses for which the credit was allowed.

Any excess credit could be carried over for up to eight years.

IMPLEMENTATION CONSIDERATIONS

For the department to implement this credit effectively, the following definitions or clarifications are needed.

- This bill does not define "qualified teaching time." It is unclear if it means only the time spent teaching in the classroom.
- Further clarification is necessary for the phrase "expenses shall be prorated among the class participants." While a credentialed public school teacher could attend the employer-sponsored class, it is unclear if the author intends to allow the employer to charge any of the other class participants for the class. Additionally, it is unclear if the amount of the credit would include expenses paid to "teach" the employer's own employees.

- It is unclear how a public school could certify the actual number of hours attributable to the employer-sponsored class, especially if more than one public school allows employees to attend the class. Additionally, the basis for the credit is not the number of hours, but the total amount of direct wages of the qualified employee teaching the course. It is unclear if the total, direct wages would be prorated on an hourly, or other basis and that, together with the lack of certification of those wages, would make this credit difficult to audit.
- The department would not be able to determine or verify that the credit limitation for "qualified wages" has been met by an employer. In addition, many of the terms used in the limitation are undefined (i.e., "enrollment space," "open," "registered," and "inability to attend"). Further clarification of and definitions for terms used in the limitation are needed before the department could implement this credit.

LEGISLATIVE HISTORY

SB 558 (Morrow, 2001/2002) and **AB 462** (Wyland & Zettel, 2001/2002) would create a similar credit to employers for costs in connection with lending a qualified employee to a public high school, community college, or vocational institution for the purpose of teaching math or science. **SB 558** is in the Senate Rules Committee awaiting assignment, and **AB 462** is in the Assembly Revenue and Taxation Committee.

SB 1948 (Lewis, 1999/2000) would have created a similar credit to employers for costs in connection with lending a qualified employee to a public high school, community college, or vocational institution for the purpose of teaching math or science. This bill failed passage from the Senate Revenue and Taxation Committee.

AB 81 (Cunneen/Alquist, 1999/2000) and **AB 1713** (Cunneen, 1997/1998) would have created a credit nearly identical to SB 1948. Also, these bills would have created a credit nearly identical to the open enrollment credit described under this bill. **AB 81** failed to pass reconsideration in the Assembly Revenue and Taxation Committee and returned to the Assembly Desk without further action. **AB 1713** was held in Assembly Appropriations.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York do not have a similar credit. These states were chosen for similarities to California population or state tax law.

FISCAL IMPACT

If this bill is amended to resolve the implementation considerations, this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Tax Revenue Estimate

Based on data and assumptions discussed below, the following revenue losses are estimated to result from this bill:

Estimated Revenue Impact of AB 902 As Introduced February 23, 2001 Years After 12/31/00 To Sunset Dates Enactment Assumed After 6/30/01 (In \$Millions)			
Fiscal Years	2001/2002	2002/2003	2003/2004
Loaned Teachers' Credit	-1.2	-1.2	-1.3
Open Enrollment Credit	-0.1	-0.1	-0.1
T O T A L S	-1.3	-1.3	-1.4

Any possible changes in employment, personal income, or gross state product that might result from this measure are not taken into account.

Tax Revenue Discussion

A) Loaned Teachers' Credit

Revenue losses would depend on the number of qualified employees loaned to California public middle and high schools for teaching math or science classes, the amount of total qualified wages paid or incurred by employers, and their respective income tax liabilities. This estimate was based on available information pertaining to math and science teachers in California public middle and high schools.

- According to the California Department of Education, the number of math and science teachers in California public schools K-12 was nearly 26,800 in full time equivalents (FTE) during the school year 1997/1998 (over 10% of total teachers). It was assumed that from over 4,900 math and science teachers that are projected to be hired for California public schools in year 2000/2001, 4,600 would teach in the grades 7–12.
- Only traditional math and science classes were considered for this credit. Computer-related classes were not considered.
- It was assumed that loaned employees under this bill would constitute approximately 1% of specified public schools certified hires. It also was assumed that employees teaching classes for whom employers do not forfeit work time on the job (e.g., evening classes) do not qualify the employer for this credit.
- Total qualified employer expenses for these employees are projected to be over \$2 million based on a yearly salary of \$50,000 paid on average to loaned employees for their teaching activities.

- At a 50% tax credit (with the deduction offset considered), revenue losses would be over \$1 million annually.

B) Open Enrollment Credit:

Revenue losses would depend on the number of open-spaces in employer-sponsored qualified educational classes filled by California public school teachers (middle or high schools) during a school year, the employers' expenses, and their respective income tax liabilities.

- It was assumed that 1% of all qualified teachers (nearly 1,400) would be able to use open spaces in employer-sponsored classes during a school year for an average expense per attendee of \$150.
- Revenue losses from a 50% credit are projected to be very minor (on the order of \$100,000 per year).

POLICY CONCERN

This bill would not allow employers that use independent contractors to train their employees (or school teachers) to claim this credit. Money paid to an independent contractor for the completion of a contract is not considered "wages."

This bill does not contain a sunset date for either credit. Sunset dates generally are provided to allow periodic review by the Legislature.

LEGISLATIVE STAFF CONTACT

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